

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4942 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A C PARMAR

Versus

G P S C & ANR.

Appearance:

MR BHARAT T RAO for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/97

ORAL JUDGMENT

#. Shri S.R.Divetia and Smt.Siddhi Talati, Addl. Govt. Pleaders are present in Court but when they were called upon to make submissions on behalf of respondents No.1 and 2, they have shown their inability to do so on the ground that papers of this Special Civil Application were not sent to them nor they have any instructions in the

matter to appear nor any of the officers from the office of respondents is present.

#. It is really a sorry state of affairs that in substantial number of cases filed against the State Government and its functionaries and officers, the papers are not available or if the papers are available, invariably reply thereof are not there. If the State Government is not interested in contesting the matters filed against it or its functionaries or officers, then what for it is spending public money in establishment of the Government Advocates' Office at the High Court. This money should be utilized for some other good cause for people. One of the causes of pendency of matters in this Court is that the State Government or its officers and functionaries are not filing reply to the matters. The State Government is biggest litigant in the Court and because of its non cooperative attitude the matters are being delayed or the Court is put to such a position where it feels difficulty to decide the matter without any assistance on its part. Be that as it may, only because of non cooperative attitude of the Government and its officers and functionaries hearing in old matters cannot be deferred. The consequence of the absence of reply from the side of respondent, herein the State and its officers, is that the averments made in the Special Civil Application stand uncontroverted. So all the facts what the petitioner states have to be accepted though they may be correct or not. There are cases before this Court where the parties file false documents of the Government but still in absence of reply as well as assistance from the Government, the Court decides the matter and thereafter the Government awakes and files application for recalling the order etc. There is total failure of the machinery of the Government in this State so far as it is concerned with the litigations pending in this Court.

#. A copy of this order be sent to the Chief Secretary, Government of Gujarat. The Chief Secretary, Government of Gujarat, is directed to appraise this order to the Hon'ble Chief Minister as well as the Hon'ble Law Minister of the State.

#. Perused the Special Civil Application and heard learned counsel for the petitioner.

#. The learned counsel for the petitioner submits that this matter is squarely covered by judgment of this Court given in Special Civil Application No.3820 of 1981 and cognate matters decided on 5.11.84 and decision of this

Court in Specail Civil Application No.6041 of 1984 and cognate matters decided on 12.3.85. I have perused the aforesaid two judgments of this Court.

#. The petitioner, an Assistant Engineer (Construction), Roads & Building Division, Godhra, filed this Specail Civil Application and prayer has been made for direction to the respondent to give him appointment on the post of Deputy Executive Engineer, Class II on the basis of aggregate marks which he secured in written examination and viva-voce test.

#. The facts of the case in brief are that Gujarat Public Service Commission ('GPSC' for short) invited application for the post of Deputy Executive Engineer Class II to be filled in by making direct selection and on the basis of performance of candidates. The selection process consisted of written test and viva-voce. To qualify for oral and viva-voce test, a candidate was required to secure minimum prescribed marks in the written test. The petitioner's claim relates to the advertisement of the aforesaid post made by GPSC in the year 1980. The petitioner urged that he qualified himself for oral and viva-voce test and secured the minimum prescribed marks for eligibility of the same. The GPSC has prescribed that for selection a candidate has to obtain atleast 50% marks in viva-voce test. So this prescription of minimum of 50% marks to be obtained in viva-voce test as condition for selection by GPSC has resulted in consequence that those candidates who secured higher marks in aggregate could not be selected because of this condition. Hence, against this prescription of obtaining minimum 50% marks in oral and viva-voce test, number of candidates filed Special Civil Application No.3820 of 1982 before this Court, which came to be decided on 5.11.84. The Division Bench of this Court has taken a view that prescription of securing minimum of 50% marks in oral and viva-voce test is not legal and directions were given to GPSC to consider the question of inclusion of petitioners therein in the merit list on the basis of aggregate marks of written as well as viva-voce test ignoring the concept of minimum qualifying marks for viva-voce test.

#. The learned counsel for the petitioner submitted that in pursuance of the judgment of this Court aforesaid, process has been started for preparation of list as per directions of this Court in aforesaid Specail Civil Application and the candidates who secured the aggregate marks less than the aggregate marks secured by petitioner have been placed in the select list. Hence this Specail

Civil Application.

#. It is unfortunate in this case that GPSC has also not put appearance. Not only that, even reply to the Specail Civil Application has not been filed. So the averments made by petitioner in this Specail Civil Application stand uncontroverted on behalf of GPSC also.

##. In view of the averment made by the petitioner that many of the persons who secured less aggregate marks in written and viva-voce test than the petitioner have been placed in the select list, I consider it to be appropriate and further in the interest of justice to dispose of this petition with directions that the petitioner shall make a representation regarding grievance made by him in this Special Civil Application to respondent No.1 within a period of one month from the date of receipt of certified copy of this order and the respondent No.1 shall decide the said representation within a period of three months from the date of receipt of the same. If the petitioner so desires, he may be given an opportunity of personal hearing. In case the grievance of the petitioner is accepted, his name may be placed in the select list prepared in pursuance of the advertisement and examination held by GPSC in the year 1980, at the appropriate place. In case the grievance of the petitioner is not accepted, a reasoned order be passed and a copy of the same may be sent to the petitioner. In the later contingency it shall be open for the petitioner to move this Court for revival of this Specail Civil Application.

##. The Specail Civil Application and Rule stand disposed of with aforesaid directions. No order as to costs.

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